

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 9032

October 28, 2021

SUMMARY OF BILL: Requires all persons and public and private entities that require other persons to wear a facial covering, or to receive or show proof of having received a vaccination for the SARS-CoV-2 virus in order to enter property owned or operated by the person or entity, to allow the other persons to opt out of any such requirements based on that person's personal preference. Exempts private residences when such requirements are enacted by the owner or lessee of the residence.

Restricts the authority of county health directors and officers in relation to vaccinations for the SARS-CoV-2 virus and facial covering requirements for the purposes of preventing the transmission of the SARS-CoV-2 virus.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact - The provisions of this bill could jeopardize federal Elementary and Secondary School Emergency Relief (ESSER), American Rescue Plan, or other federal funds allocated for state use. The amount and timing of the funds that will be jeopardized is unknown and cannot reasonably be determined.

Assumptions:

- The U.S. Supreme Court issued a ruling in February 20, 1905, *Jacobson v. Massachusetts*, upholding the right of states to compel vaccination.
- Each state decides which vaccines are required based on recommendations from the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices (ACIP).
- Immunization or vaccination for COVID-19 is currently not required by any state or local governmental entity in Tennessee. Prohibiting any such future requirement will not result in a significant fiscal impact to the state or local government.
- If the proposed legislation prohibits a state or local entity or private business from following any future federal vaccination mandate, federal funding could be jeopardized.
- The proposed legislation could prohibit the required wearing of masks in public schools, which may conflict with the federal requirements in the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.
- Both the ADA and Section 504 of the Rehabilitation Act require the state and its political subdivisions to make reasonable accommodations for students with disabilities.

- Failure to comply with IDEA, the ADA, and Section 504 of the Rehabilitation Act may jeopardize the state's \$261,000,000 in federal special education funding.
- The ARP Act requires each LEA that receives ESSER funds to adopt a plan for the safe return to in-person instruction and continuity of services.
- The U.S. Department of Education requires each plan to describe how the LEA will maintain the health and safety of students, teachers, and other staff and the extent to which it has adopted policies on the safety recommendations of the Centers for Disease Control and Prevention (CDC).
- The CDC's safety recommendations include the universal and correct wearing of masks.
- Tennessee's ARP ESSER allocation is \$2,489,423,407.
- DOE and LEAs may risk their federal ESSER funds for failure to comply with the requirements of the ARP Act.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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